

OFFICIAL FILE

ILLINOIS COMMERCE COMMISSION

UNITED STATES OF AMERICA

COMMERCE COMMISSION

ORIGINAL

FILE

04/04/02

STATE OF ILLINOIS)
APPELLATE COURT)
SECOND DISTRICT)

ss

2004 OCT 20 A 9:59

At a Session of the Appellate Court begun and held at Elgin on the 1st day of January, in the year of our Lord two thousand and two within and for the Second District of Illinois:

Present: Honorable SUSAN F. HUTCHINSON, Presiding Justice

Honorable JOHN J. BOWMAN, Justice

Honorable R. PETER GROMETER, Justice

Honorable ROBERT E. BYRNE, Justice

Honorable FREDERICK J. KAPALA, Justice

Honorable THOMAS E. CALLUM, Justice

Honorable ROBERT D. MCLAREN, Justice

Honorable FRED A. GEIGER, Justice

Honorable JACK M. O'MALLEY, Justice

Robert J. Mangan, Clerk

Kenneth R. Ramsey, Sheriff

#2-01-0635

COMMONWEALTH EDISON COMPANY,
Petitioner,

APPEAL FROM THE
ICC

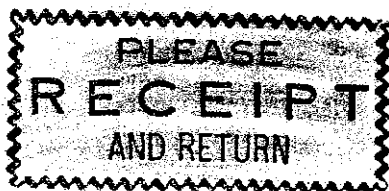
v.
ILLINOIS COMMERCE COMMISSION,
CENTRAL ILLINOIS LIGHT COMPANY;
CENTRAL ILLINOIS PUBLIC SERVICE
COMPANY; ILLINOIS POWER COMPANY;
INTERSTATE POWER COMPANY;
MIDAMERICAN ENERGY COMPANY;
MT. CARMEL PUBLIC UTILITY
COMPANY; SOUTH BELOIT WATER,
GAS, AND ELECTRIC COMPANY,
and UNION ELECTRIC COMPANY,
Respondents

TRIAL COURT NO.
ICC00-0494

(AES NewEnergy, Inc.; Alliant
Energy Corporation; Association
of Illinois Electric
Cooperatives; Blackhawk Energy
Services, L.L.C.; Enron Energy
Services, Inc.; Illinois
Industrial Energy Consumers;
Metropolitan Chicago Healthcare
Council; Nicor Energy, L.L.C.;
Peoples Energy Service
Corporation; The People of the
State of Illinois; and Unicom
Energy, Inc., Intervenor).

Received by
J.R.P. Tiller
5/13/02

STATE OF ILLINOIS
CLERK OF THE COURT
JUL 13 2 35 PM '02



MANDATE

BE IT REMEMBERED, that, to wit: On the 4th day of April, 2002,
a Decision of the aforementioned Court was entered of record and in accordance
with the views expressed in the attached Decision the judgment of the trial

UNITED STATES OF AMERICA

STATE OF ILLINOIS)
APPELLATE COURT) ss
SECOND DISTRICT)

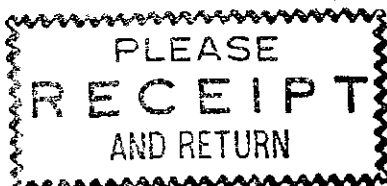
court is Affirmed.

CERTIFICATE

I, Robert J. Mangan, Clerk of the Appellate Court, Second District of the State of Illinois, and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of said Appellate Court, in the above entitled cause of record in my said office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this 10th day of May , 2002, A.D.

Clerk of the Appellate Court
Second District



1-01-0635

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TO ATTORNEYS OF RECORD:

05/10/02

You are hereby notified that the Final Orders in the cases listed below were this day forwarded to the Clerks of the Circuit Courts:

Robert J. Mangan, Clerk

2-00-0938	People AE v. Thompson, John M., AT.	Appeal from DuPage
2-00-1071	People AE v. Fernandez, Eduardo D., AT.	Appeal from DuPage
2-00-1082	People AE v. Williams, Herman AT.	Appeal from Lake
2-00-1254	People ex rel, Pukala, Diane AE v. Tift, Brenton AT CONS WITH: 2-00-1420	Appeal from DuPage
2-00-1262	People AE v. White, Johnny AT.	Appeal from Winnebago
2-00-1292	People AT v. Pineda, Jose F., AE.	Appeal from Kane
2-00-1295	People AE v. Evans, Larry AT.	Appeal from DuPage
2-00-1311	People AE v. McRee, David L., AT.	Appeal from Lake
2-00-1339	Spaeth, Frank W., AT v. Volkswagen of American, AE., (Ed Murphy Buick, Inc., & Volkswagen Credit, Inc., Defendants).	Appeal from DuPage
2-00-1416	In re Dana L., a Minor (People AE v. T.O., AT).	Appeal from Winnebago
2-00-1420	People, AE v. Tift, Brenton AT. CONS WITH: 2-00-1254	Appeal from DuPage
2-00-1451	People AE v. Hunter, Jimmy L., AT.	Appeal from DuPage
2-01-0007	Giegoldt, Virginia, AT v. Condell Medical Center, AE.	Appeal from Lake
2-01-0033	Holtzman, Bryan AT v. Bruno, Michael & Maria, AE.	Appeal from Lake
2-01-0045	Father & Sons Remodelers, Inc., AE v. Cipollo, Robert & Rita, AT.	Appeal from DuPage
2-01-0059	Allstate Insurance, Company, Subrogee of Buczkiewicz, Joseph AE v. Mahr, Richard L., AT.	Appeal from DuPage
2-01-0072	People AE v. Blanchette, Brian Richard AT.	Appeal from McHenry
2-01-0074	In re Timothy B., a Minor (People AE v. William B., Sr. & Barbara B., AT).	Appeal from DuPage
2-01-0126	Rodgers, Clarence A. & Glenda M., AE v. North Avenue Auto, Inc. & Fidelity Financial, Inc., AT.	Appeal from DuPage

2-01-0199	Marvel, Timothy, AT v. Guyer, Mary E., AE.	Appeal from Lake
2-01-0220	Starfire, Inc., Bongivanni, Carl G. & Jans, Matthias, Jr., AE v. Bailen, John R. & Dorothy D., AT.	Appeal from Lake
2-01-0226	IRMO: Carson, Catherine W., n/k/a (Weis) AE & Richard, AT.	Appeal from DuPage
2-01-0276	IRMO: Roesch, Clarice D., AE & Richard R., AT.	Appeal from DeKalb
2-01-0283	Illinois Bell Telephone Co., d/b/a Ameritech Illinois, AT/AE v. Classic Landscape, Ltd., AE/AT.	Appeal from DuPage
2-01-0302	People AE v. Costabile, Jr., Antonio M., AT.	Appeal from DuPage
2-01-0454	People AE v. Maher, Lisa M., AT.	Appeal from Winnebago
2-01-0516	Montana, Louis & Traci AT v. Rot's Building & Development, Inc. AE.	Appeal from DuPage
2-01-0617	In re C.T., F.M., M.M., Mc.M., J.T., S.B., T.M., & R.C., Minors, (People AE v. M.B., AT).	Appeal from Winnebago
2-01-0619	People AE v. Simmons, Linda R., AT.	Appeal from Winnebago
2-01-0635	Commonwealth Edison Co., AT v. ICC, Central Il., Light Co., et al., AE.	
2-01-0814WC	Steiner Corp., AT v. Industrial Commission et al (Michael Adkins, AE).	Appeal from Kane
2-01-0958	In re Cyrus L. & Echo L., Minors (People AE v. Monica L., AT. and Linda T., Intervenor). CONS WITH: 2-01-1013	Appeal from Winnebago
2-01-0981WC	Ruan Transport Corporation, AT v. Illinois Industrial Commission et al., (Floyd R. Summers, AE).	Appeal from Winnebago
2-01-1013	In re Cyrus L. & Echo L., Minors (People AE v. Linda T., AT). CONS WITH: 2-01-0958	Appeal from Winnebago
2-01-1084	In re O.R., a Minor (People, AE v. A.R., AT).	Appeal from Kane
2-01-1112	IRMO: Busa, Nancy L. AE & Gary T., AT.	Appeal from Lee

05/10/02

2-01-1115 In re A.G. and C.G., Minors
(People AE v. Allen G. Sr., AT).
2-01-1272 In re Bennie M., a Minor
(People AE v. H.M., AT).

Appeal from Winnebago

Appeal from Lake

38 CASE/S SELECTED

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No. 2--01--0635

APR 04 2002

IN THE

ROBERT J. MANGAN, CLERK
APPELLATE COURT 2nd DISTRICT

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

COMMONWEALTH EDISON COMPANY,)	Petition for review of order
)	of Illinois Commerce
Petitioner,)	Commission.
)	
v.)	ICC No. 00--0494
)	
ILLINOIS COMMERCE COMMISSION;)	
CENTRAL ILLINOIS LIGHT COMPANY;)	
CENTRAL ILLINOIS PUBLIC SERVICE)	
COMPANY; ILLINOIS POWER COMPANY;)	
INTERSTATE POWER COMPANY;)	
MIDAMERICAN ENERGY COMPANY; MT.)	
CARMEL PUBLIC UTILITY COMPANY;)	
SOUTH BELOIT WATER, GAS, AND)	
ELECTRIC COMPANY; and UNION)	
ELECTRIC COMPANY,)	
)	
Respondents)	
)	
(AES NewEnergy, Inc.; Alliant)	
Energy Corporation; Association)	
of Illinois Electric)	
Cooperatives; Blackhawk Energy)	
Services, L.L.C.; Enron Energy)	
Services, Inc.; Illinois)	
Industrial Energy Consumers;)	
Metropolitan Chicago Healthcare)	
Council; Nicor Energy, L.L.C.;)	
Peoples Energy Service)	
Corporation; The People of the)	
State of Illinois; and Unicom)	
Energy, Inc., Intervenors).)	

PUBL. IN FULL

JUSTICE GEIGER delivered the opinion of the court:

The petitioner, Commonwealth Edison Company (ComEd), appeals directly to this court from an order of the respondent, Illinois Commerce Commission (the Commission). The Commission's order provided that alternative retail electric suppliers who utilize the

single billing option provided under section 16--118(b) of the Public Utilities Act (the Act) (220 ILCS 5/16--118(b) (West 2000)) are not required to bill their electric customers for past-due amounts that the customers may owe ComEd for previously supplied "bundled" service. The order also provided that alternative retail electric suppliers do not have to apply payments that they receive from their customers to past-due amounts that the customers may owe ComEd for previously supplied "bundled" service. On appeal, ComEd argues that the Commission's order misinterprets the statutory requirements of section 16--118(b) of the Act. We affirm.

This appeal arises under Article XVI of the Act, titled the Electric Service Customer Choice and Rate Relief Law of 1997 (220 ILCS 5/16--101 et seq. (West 2000)). The purpose of this article was to introduce competition into the Illinois electricity market. 220 ILCS 5/16--101A(b) (West 2000). A brief background discussion of Article XVI is important to understand the issues presented in the instant appeal.

Under the traditional model of the retail electricity market, a retail customer purchases several different services from its local electric utility as a single "bundled" service. Bundled service includes the electricity itself, as well as all services related to the distribution and delivery of the electricity. However, under the new Article XVI, an eligible retail customer may choose either to continue purchasing bundled service from its local electric utility, or to purchase electricity as a separate "unbundled" service from three new types of suppliers. Unbundled service is available for purchase from (1) alternative retail

services itself, and (iv) require the [RES] that elects the billing option provided by this tariff to include on each bill to retail customers an identification of the electric utility providing the delivery services and a listing of the charges applicable to such services." 220 ILCS 5/16--118(b) (West 2000).

Pursuant to this statutory requirement, ComEd filed a delivery services tariff with the Commission, detailing its intended charges for the delivery of electricity supplied by RESs. After some modification and litigation, these tariffs were approved by the Commission.

On July 11, 2000, the Commission initiated the instant proceeding against ComEd and other electric utilities. The purpose of the proceeding was to investigate whether the delivery services tariffs were unjust, unreasonable, discriminatory, or preferential due to a lack of conformity. Numerous interested parties representing the electric industry and the public interest intervened in the proceeding. Hearings were held in the Commission's Springfield office on December 12, 13, and 14, 2000, at which time the witnesses were available for cross-examination.

At the hearing, as relevant for purposes of this appeal, ComEd argued that the SBO required RESs to bill for past-due amounts that a customer may owe ComEd for bundled services provided by ComEd prior to the time that the RES became the electrical supplier for the customer. ComEd argued that these past-due amounts should be included in the single bill along with ComEd's current charges for the delivery cost of the RES's electricity. ComEd also argued

customers and that there was no need to inject RESs into the process.

As to the issue of the application of partial payments, the Commission found that RESs should apply such payments only to charges associated with delivery service balances and not to an older balance still owed to the electric utility for bundled service. The Commission explained:

"The directive in Section 16--118(b) (i) that partial payments made by retail customers are to be credited first to the electric utility's tariffed services means that when there are not sufficient funds to cover both the delivery service charge and the supplier charge then the [RES] must remit the delivery service charge to the utility."

ComEd filed an application for rehearing of the Commission's order, which was denied by the Commission on May 9, 2001. On June 14, 2001, ComEd filed a petition for review with this court.

On appeal, ComEd argues that the Commission's order erroneously interprets the SBO provisions of section 16--118(b) of the Act. ComEd asserts that the plain language of section 16--118(b) requires that an RES electing the SBO must bill its customers for all past-due amounts owed to ComEd for bundled services. ComEd further asserts that all partial payments received by an RES must be first applied to satisfy ComEd's outstanding charges for bundled services. ComEd concludes that such an interpretation best effectuates the purpose of Article XVI and will lead to the least customer inconvenience.

Ill. App. 3d at 1012. Terms must be considered in their overall context with a view to the reason and necessity for the statute and the purpose to be achieved thereby. MCI Telecommunications, 168 Ill. App. 3d at 1012.

We therefore turn to a consideration of the language of section 16--118(b) of the Act. As detailed above, the statute requires electric utilities, such as ComEd, to file a tariff that "would allow [RESSs] to issue single bills to the retail customers for both the services provided by such [an RES] and the delivery services provided by the electric utility to such customers." (Emphasis added.) 220 ILCS 5/16--118(b) (West 2000). We believe that this statutory language is plain on its face and requires the RES to issue a single bill for only two types of services, (1) "services" provided by the RES, and (2) "delivery services" provided by the electric utility. Therefore, under the SBO, the only service provided by the electric utility for which the RES is required to bill is the delivery service charged by the electric utility to transport electricity from the RES to the retail customer. The Act contains no language that requires an RES to bill and collect amounts that are past due and owing to the utility for charges incurred prior to the time that the RES began supplying electricity to the customer. We therefore agree with the Commission that section 16--118(b) does not require an RES to bill its customers for past-due amounts owed to the electric utility for bundled service.

Additionally, we believe that the Commission's interpretation harmonizes with the entire statutory scheme and best achieves the

RES's customer service department with questions or complaints about the charges. However, RES staff would be unable to resolve such concerns, as the RES did not generate the charges and has no authority to take any action on such charges. These witnesses expressed concern that such a billing requirement would create customer confusion and would interfere with the RES's customer relationships. There was also a concern that such a billing requirement would increase RES costs. Such evidence rebuts ComEd's assertions that RES billing for past-due amounts will facilitate Article XVI's objective of developing a competitive electricity market that operates both efficiently and equitably. See 220 ILCS 5/16--101A(d) (West 2000).

ComEd argues that if it is required to issue bills to collect its past-due accounts, the convenience promised by the SBO will be defeated. We disagree. As explained above, the SBO option contemplated by section 16--118(b) allows for the recovery of both RES services and delivery charges in a single bill. As already noted, we believe that the purpose of this provision is to simplify and facilitate the RES-customer relationship. In essence, the SBO permits an RES to send a single bill to its customers just as ComEd sends to its bundled customers. Therefore, section 16--118(b) levels the competitive playing field by permitting both RESs and electric utilities to issue single bills. Based on the plain language of the statute, we see no evidence that the SBO was intended as a mechanism through which electric companies could utilize RESs to collect their past-due accounts. Accordingly, for all the reasons detailed above, we conclude that the Commission

provided to its customers was charged in accordance with the rates on file pursuant to Article IX, such service falls within the definition of a tariffed service under the Act. Accordingly, ComEd concludes that any partial payments received by an RES must be first credited to past-due amounts owing for these bundled services.

Although we do not dispute that bundled service may fall within the definition of a "tariffed service" under the Act, we nonetheless believe that the legislature's use of the term "tariffed service" in subsection (b)(i) must be read in context with the remainder of section 16--118(b). In construing statutes, courts must examine the entire statute as a whole and consider the objective and purpose of the statute. McNames v. Rockford Park District, 185 Ill. App. 3d 291, 295 (1989). As discussed above, the first sentence of section 16--118(b) requires an RES to bill its customers for only the delivery service provided by the electric utility. As the statute only requires an RES to bill for the electric utility's delivery service, it would be inconsistent to require RESs to credit partial payments towards other outstanding charges owed to the electric utility for previously provided bundled service, and we do not believe the legislature intended such a result. Rather, we believe that the use of the general term "tariffed service" in subsection (b)(i) must be read in conjunction with and limited by the use of the specific term "delivery service" at the beginning of section 16--118(b). See Antunes v. Sookhakitch, 181 Ill. App. 3d 621, 628 (1989), aff'd, 146 Ill. 2d 477 (1992) (specific statutory provisions control over

owed to an electrical utility. Therefore, we affirm the Commission's findings as to the crediting of partial payments.

For the foregoing reasons, the order of the Commission is affirmed.

Affirmed.

HUTCHINSON, P.J., and GROMETER, J., concur.

No. 2--01--0635

United States of America

COMMONWEALTH EDISON COMPANY,

Petitioner,

v.

**State of Illinois,
Appellate Court,
Second District,**

ss.

ILLINOIS COMMERCE COMMISSION, et al.

Respondents

(AES New Energy, Inc.; et al.
Intervenors).

I, ROBERT J. MANGAN, Clerk of the Appellate Court, in and for said Second Judicial District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true, full and complete copy of the decision of the said Appellate Court in the above entitled cause of record in my said office.

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of the said Appellate Court, in Elgin, in said State, this

10th day of May, A.D. 20 02.

Robert J. Mangan
Clerk Appellate Court, Second District